BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JOYCE MORSTORF	}
Claimant VS.	Docket No. 162 640
VOLUME SHOE CORPORATION) Docket No. 162,640
Respondent AND	
SELF INSURED Insurance Carrier	}

ORDER

ON December 9, 1994, the Appeals Board considered claimant's request to review the Order entered by Administrative Law Judge Floyd V. Palmer on October 17, 1994.

ISSUES

The Administrative Law Judge denied claimant's request for attorney fees in a post-award proceeding requesting penalties for the non-payment of a medical bill. Claimant requests the Appeals Board review that finding and contends attorney fees must be granted under the provisions of K.S.A. 44-536(g). That is the issue now before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds, as follows:

This case should be remanded to the Administrative Law Judge to determine the amount of reasonable attorney fees to be awarded claimant in this proceeding. K.S.A. 44-536(g) states:

"In the event any attorney renders services to an employee or the employee's dependents, subsequent to the ultimate disposition of the initial and original claim, and in connection with an application for review and modification, a hearing for additional medical benefits, **or otherwise**, such attorney **shall be entitled** to reasonable attorney fees for such services, in addition to attorney fees received or which the attorney is entitled to receive by contract in connection with the original claim, and such attorney fees shall be awarded by the director on the basis of the reasonable and customary charges in the locality for such services and not on a contingent fee basis." (Emphasis ours.)

IT IS SO OPPEDED

The parties agree claimant's attorney rendered services after disposition of the original claim to obtain penalties for non-payment of a medical bill that had been ordered paid. Because the proceeding for penalties is post-award, K.S.A. 44-536(g) entitles claimant to reasonable attorney fees for services rendered. Respondent contends attorney fees may only be awarded when there is a post-award request for review and modification or additional benefits. The Appeals Board disagrees and finds the statute unambiguous.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer, dated October 17, 1994, denying attorney fees should be, and hereby is, reversed and this proceeding is remanded to the Administrative Law Judge for an order and determination of a reasonable amount of attorney fees to be awarded claimant's attorney in this proceeding. The Appeals Board does not retain jurisdiction over this matter and the parties must file a new application for review and follow the appropriate procedures should they be aggrieved after they receive the decision and order from the Administrative Law Judge.

II IS SO ORDERED.
Dated this day of December, 1994.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: Seth G. Valerius, Topeka, KS Patrick M. Salsbury, Topeka, KS Floyd V. Palmer, Administrative Law Judge George Gomez, Director